

REMARKS/ARGUMENTS

Applicant submits herewith the Supplemental Declaration of the inventor, Francisco O'Meany, and the Declaration of the attorney of record, H. Michael Brucker.

These Declarations and their attachments provide specific evidence that the invention was conceived prior to July 13, 2000 (the effective date of the Bartone et al. patent 6,633,823 B2).

The Declarations also establish that the invention was diligently reduced to practice by the building and demonstration of a prototype after conception and that a provisional patent application was also diligently pursued and filed following the conception of the invention.

Mr. O'Meany declares that he conceived of the invention in April 2000 and Mr. Brucker, in his Declaration, states that the invention was described to him on June 10, 2000. This establishes conception prior to July 13, 2000.

Both the O'Meany and Brucker Declarations have attached thereto and refer to a schematic drawing dated June 4, 2000 as a document that was made on its date and which was used on June 10, 2000 to describe the invention to Mr. Brucker. This provides documentary evidence of conception before July 13, 2000.

Further documentary evidence that the invention was conceived before July 13, 2000 are the pages of the business plan dated June 16, 2000 (attached to the Brucker Declaration) that were provided to Mr. Brucker after the June 10, 2000 meeting with the inventor and before July 13, 2000.

The invention is fully disclosed in a drawing (attached to the Brucker Declaration) which shows by a fax legend that it was in existence at least on July 9, 2000.

That the inventor and his associates were diligent in reducing the invention to practice is established by the e-mail "of production costs" and the e-mails evidencing that the first prototype was sent to Mr. Culley as the initiating step of producing a prototype of the invention described and claimed in the pending application (attached to O'Meany Declaration). Also, the meeting minutes attached to both Declarations sets out a schedule of activity leading to a working model which is diligent and resulted in the working model. That only a few months expired between conception and reduction to practice (by the prototype and the filing of the provisional patent application) is *ipso facto* diligent.

Applicant submits that the Supplemental Declaration of Mr. O'Meany, the Declaration of Mr. Brucker, the attachments to the Declarations, when taken together with previous submissions, constitutes an adequate showing under 37 C.F.R. 1.131.

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Response 2
09/927,104
Francisco O'Meany

Accordingly, Applicant respectfully requests that the rejection of the claims based on the Bartone et al. patent be withdrawn.

Respectfully submitted,

By 

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Response 2
09/927,104
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